

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

TRI-STATE HDWE. INC.,)
 Plaintiff,)
)
 v.) No. 06-5020-CV-SW-FJG
)
JOHN DEERE COMPANY,)
 Defendant.)

ORDER

Pending before the Court is Plaintiff's Motion for Court to Reconsider Trial Venue (Doc. No. 16). The Court's Scheduling and Trial Order (Doc. No. 15), set trial of this matter in Kansas City, Missouri. Plaintiff requests that the Court move the trial venue from Kansas City, Missouri to Springfield, Missouri.

Plaintiff indicates in its original motion that certain witnesses reside outside of the state (in Arkansas and Oklahoma), and plaintiff would not be able to subpoena their testimony live at trial as the witnesses live more than 100 miles from Kansas City, Missouri.¹ Plaintiff further indicates that its owners and many witnesses reside in McDonald County, Missouri, and that travel to Kansas City for trial would be inconvenient for the plaintiff, its witnesses, and its attorneys. Plaintiff requests, in the alternative, that if trial is not moved to Springfield, Missouri, "the Court permit plaintiff to dismiss its claim without prejudice so both plaintiff and plaintiff's counsel can consider whether or not to continue the litigation if they are required to do [so] in Kansas City." See Doc. No. 16, p. 2.

In response, defendant states (1) plaintiff does not provide evidentiary support for its assertion that certain witnesses are beyond the Court's subpoena power; (2) even if witnesses resided outside the Court's subpoena power, those witnesses could testify by

¹Notably, in plaintiff's original motion, plaintiff provided no evidentiary support for this assertion. In its reply brief, plaintiff indicated the names of certain persons who may be called as witnesses who reside more than 100 miles from Kansas City, Missouri.

videotaped deposition if they are unable or unwilling to testify at trial in Kansas City; (3) plaintiff's counsel represent on their firm website that they appear in United States District Courts in Kansas City; and (4) leave to dismiss should not be granted, as it only would provide and opportunity for forum and judge shopping. In reply, plaintiff provides an affidavit indicating seven individuals who may be called to testify that live more than 100 miles from Kansas City.

After consideration of the parties' arguments, plaintiff's motion for reconsideration (Doc. No. 16) is **DENIED**. At this early stage in the litigation², the Court concludes in its discretion that the trial setting should remain in Kansas City. Furthermore, the Court finds that plaintiff's request to dismiss its case without prejudice should be **DENIED**.

IT IS SO ORDERED.

/s/Fernando J. Gaitan, Jr.

Fernando J. Gaitan, Jr.
United States District Judge

Dated: July 11, 2006
Kansas City, Missouri

²Plaintiff filed its state court petition on February 6, 2006. Defendant removed this matter to federal court on March 10, 2006. Trial is currently set for December 3, 2007.